

# **EXHIBIT 12**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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In Re: 9/11 Property Damage  
and Business Loss Litigation

21 MC 97, 101 (AKH)

March 22, 2007  
3:30 p.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

KEITH S. FRANZ

ROBERT A. CLIFFORD  
TIMOTHY J. TOMASIK

LEE GODFREY  
MARC S. MOLLER

BETH GOLDMAN  
SARAH NORMAND  
JEANETTE VARGAS  
ROGER PODESTA  
DOUGLAS J. PEPE  
DONALD MIGLIORI  
APPEARANCES: (continued)  
JEFFREY ELLIS  
DESMOND BARRY

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2

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RICHARD A. WILLIAMSON  
CATHI HESSION  
JASON COHEN  
FRANKLIN M. SACHS  
RICHARD CAMPBELL  
JOSEPH WAYLAND  
JAMES P. CONNORS

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1 think any government discovery is relevant any more. They  
2 don't think any depositions of the government are relevant any  
3 more, and they're ready to go ahead and try their cases.

4 We think it's obvious on the face of the case that the  
5 Government's at the heart of it, and the government discovery  
6 is critical to our defenses as we explained to you.

7 I'm prepared to talk at length about why that is, but  
8 I don't think it's necessary to do so. And one of the reasons  
9 I don't think it is necessary to do so is because the  
10 plaintiffs, themselves, all of them, each one of them signed a  
11 document which they submitted to the Eastern District of  
12 Virginia, and then went to the Court's Circuit on and said we  
13 need all of this government discovery because it is relevant to  
14 the claims that's relevant to the defenses and it's relevant to  
15 the duties of the, of all of the parties involved. So I hope I  
16 don't have to spend much time because I think before today,  
17 everyone recognized the need to take discovery of the  
18 government.

19 THE COURT: Well, the issues I put are Louie Freeh,  
20 George Tenet and Richie Clark.

21 MR. WAYLAND: I think, your Honor, with respect to  
22 those three specific requests, the way we proceeded was to  
23 begin the process to see what the reaction of the government  
24 would be.

25 THE COURT: They came back with a predictable  
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47

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response.

1 MR. WAYLAND: But -- for the individuals, your Honor,  
2 but not so much for the subject matter of the testimony that we  
3 wanted. And if you look at the --

4 THE COURT: All right. So we have consensus that Mr.  
5 Freeh, Mr. Tenet and Mr. Clark will not be witnesses, at least  
6 not at the present juncture

7 MR. WAYLAND: Not at the present time, as long as  
8 we -- just as we did the FAA, they provided a 30(b)(6) witness  
9 to substitute, so.

10 THE COURT: All right. Those notices involving  
11 Messrs. Freeh, Tenet and Clark are withdrawn.

12 MR. WAYLAND: Well, with respect to them individually.  
13 With respect to subject matter, just as with the FAA --

14 THE COURT: If you're looking for 30(b)(6), you can't  
15 determine who the people will be.

16 MR. WAYLAND: You're right, your Honor. Okay.

17 THE COURT: So Freeh, Tenet and Clark can go about  
18 their business.

19 MR. WAYLAND: They may, your Honor, but we will  
20 pursue --

21 THE COURT: The will breathe a sigh of relief.  
22 30(b)(6) FAA witnesses, is there any objection to  
23 this?  
24

25 MS. NORMAND: No, your Honor. In fact, we've had an  
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48

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1 initial meet and confer with the defendants, and I think it was  
2 a very productive meeting. We agreed on a number of topics  
3 that would be appropriate. There are outstanding issues,  
4 however. We've, for example, made clear to the defendants our

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view that information, intelligence information known to the FAA or not known to the FAA that was not communicated to the airlines is not relevant to the issues in dispute in this case, and for obvious reasons raises a host of issues for the government.

THE COURT: I've dealt with that issue in connection with World Trade Center applications if I remember correctly and I'll deal with them again, and I think those parties pushing for that need to know the record.

MR. MOLLER: We will, your Honor.

THE COURT: By I anticipate that I would rule that information not communicated is not relevant.

MR. WAYLAND: Your Honor, this is an extraordinary serious issue for all the defendants and we need to make a substantial record on that with a hearing and the opportunity to -- full briefing. Because we think once your Honor hears our argument, sees the law on this issue and thinks about the issues, you may have a different view of, so we need to have a second --

THE COURT: Make a motion. Do it by motion.

MR. WAYLAND: All right.

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49

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MR. MIGLIORI: Your Honor, we'd ask that it be made promptly as well, because --

THE COURT: Mr. Wayland can make it promptly.

MR. WAYLAND: We will make it promptly, your Honor. It's a substantial motion. It will take some time to put it together, but we will make a motion.

THE COURT: 30 days?

MR. WAYLAND: 30 days, your Honor.

MR. MIGLIORI: Your Honor, just so it's clear on the record, the representation -- there are two types of federal discovery. One has to do with the investigations of what happened on 9/11 and leading up to 9/11, as opposed to the discovery of what the government knew pre-9/11 and what it did or didn't tell, and we share the Government's concern about the letter.

THE COURT: I didn't catch the distinction.

MR. MIGLIORI: The nine -- the FBI after, on the day of 9/11, went right to Logan and started interviewing people with knowledge about the events immediately.

THE COURT: And I understand that can lead to relevant information.

MR. MIGLIORI: And that's an investigative discovery consistent with what plaintiffs have asked for in a very tailored specific way. That's --

THE COURT: Is the FBI willing to surrender that

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50

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information?

MR. MIGLIORI: Some of it has come.

MS. NORMAND: Your Honor, that is the type of information that is likely to be provided. I'm not in a position to articulate our position as to specific documents, but things like interviews of employees at the airport and things confiscated by FBI or FAA as of that time, those are probably the types of things that will be appropriately provided.